primary Government agency supporting the training of military and nonmilitary personnel to respond to chemical and biological attacks.

Just last January, the Coast Guard sent 30 national strike force members to the Army's chemical school in Fort Leonard Wood, MO. They learned how to spot nerve agents, scan people for radiation, and respond in other ways to terrorist attacks. From their DOD schooling, some went straight to the Olympic Games in Salt Lake City for duty.

My amendment, which the committee also accepted unanimously, makes sure that the new Department of Homeland Security has access to the Defense Department's expertise.

We will consider a number of amendments in the coming days and hopefully have a thorough debate. But let's not lose sight of the fact we have a very solid proposal before the Senate. It implements the President's call for the creation of a strong, robust Department of Homeland Security. It does so in a careful and constructive way. In the end, it will preserve, protect, and defend the United States of America.

The PRESIDING OFFICER. The Senator from Arizona.

JUDGE PRISCILLA OWEN

Mr. KYL. Mr. President, I regret to say this day is a very dark day in the history of the Senate. The Senate Judiciary Committee, of which I am a member, has just rejected, on a purely partisan party line vote, the nomination of one of President Bush's finest nominees to the U.S. Circuit Court, Justice Priscilla to the Fifth Circuit Court of Appeals.

First, there was a vote to reject her 10 to 9. Then, Senator HATCH asked she be reported to the full Senate without recommendation so that all of our colleagues could have an opportunity to cast their vote on her nomination. That was rejected 10 to 9. Finally, he said, all right, then, I will move that we report her out unfavorably since the majority of the committee, 10 to 9, does not support her confirmation. That, too, was rejected on a party-line vote.

The full body of the Senate will not have an opportunity to vote on the confirmation of Justice Priscilla Owen.

The reason this is so distressing today is because it marks a new era in the judicial confirmation process. That much was made clear by the Democratic members of the committee today. It is clear now that there is a new test to be applied to the President's nominees. It is no longer enough that the nominee be well qualified and above reproach in terms of judicial ethics. It is now necessary that the candidate be committed to actively pursuing the political agenda of the majority of the members of the committee. If not, they will characterize the nominee as ''extremist,'' as ''right wing,'' as Justice Owen was characterized today.

Now, some time ago the chairman of the committee said the American Bar Association, which had historically rated the qualifications of nominees, was 6really the gold standard because they were very careful in how they considered the qualifications of nominees and their recommendations were not made lightly. The highest recommendation that the American Bar Association can give to a nominee is ''well qualified.'' Justice Owen received the recommendation of ''well qualified'' not by a majority of the members of the ABA who decide these matters, but unanimously. Every single person involved in the ABA who rated the nominee, rated her well qualified. In other words, she could not have gotten a higher rating from the American Bar Association.

As I said, the chairman of the committee characterized this process as the gold standard for nominees. I said today that I guess the Senate has now gone off the gold standard; that is no longer enough.

The Senator from New York was quite candid in articulating again, as he has on numerous occasions, what he believes the new standard should be. And central to the application of the new standard is a determination by the members of the committee of the purported ideology, political ideology, of the nominee with the right to determine whether the nominee is within the mainstream, as they identify it, and then the right to vote down any nominee considered to be outside the mainstream.

Never mind that our great and distinguished colleagues, such as Senator KENNEDY of Massachusetts, Senator SCHUMER of New York, Senator LEAHY of Vermont, in my opinion, are not necessarily the most qualified to describe what is mainstream in American politics—as least not as qualified as a person who has been elected by all of the people of the country, the President of the United States. Apart from the fact that I think President Bush probably has a better handle on what is mainstream in the country than my colleagues on the committee, myself included, the rejection of the previous standard and the insertion of this new political standard into the Judiciary Committee deliberations is a breach of tradition, highly dangerous to the continuation of the rule of law in the United States, and itself an exercise in blatant, political activity.

When the Senator from New York suggested this new standard, he held a hearing. Among the people who testified were Lloyd Cutler, counselor to several Democratic Presidents. Lloyd Cutler is a man of great distinction in the bar with a long history of activity in the judicial nomination process. He said it would be a grave mistake to insert politics into the nonpolitical branch of Government, the third branch, the judicial branch. He said if an ideological litmus test ever became the Senate's reason for confirming or rejecting a nominee, that it would have injected politics into the third branch, and the citizenry could then well conclude that the third branch of Government was merely an extension of the other two, subject to political decision making, and that the public could then rightly lose faith; that the designates of the third branch of Government would be devoid of political influence, that they would be fair and honest. And I would just add in my own words that it would be pretty hard to believe anymore that when you went into a court and you expected to receive blind justice, as we are all accustomed to, that you might well be faced with the decision of a political judge who would not base the case on the law or the Constitution, but rather on political ideology.

That is wrong. It is dangerous. It is unprecedented. That is why I say this was a black mark in the history of the Senate because today we had a committee that made a decision that I can only characterize as applying a political litmus test to the nominee—and a faulty one at that.

If my colleagues can characterize Justice Priscilla Owen as a right-wing extremist, an ideologue, an activist judge—as they did—then anyone can be so characterized. Senator GRAMM made the point a few minutes ago. He said: I know a political ideologue when I see one because I am. Most of us in the Senate, in fact, are political ideologues in the finest sense of that word. We believe in a political ideology and we care enough, no matter what other occupation we might have had, to try to advance our political philosophy in the U.S. Senate on behalf of our constituents. That is in the great tradition of the United States and applied to the second branch of Government, the legislative branch.

But it has never been appropriate to apply that to the third branch of Government, our judges. As I said, if Priscilla Owen can be so characterized, then anyone can be. She is about as far from being an ideologue or an extremist or an activist as anybody I have ever seen nominated to the court.

A bit about her: She has earned the support of Texas Democrats and Republicans. She has been three times elected to the Texas Supreme Court. She had the endorsement of every major Texas paper in her last race. She is not a partisan.

She is brilliant. She had the highest score on the Texas bar exam when she took it. As I said, the American Bar Association rated her unanimously with their highest rating of ''well qualified.''

Everything that was said about her in the committee deliberations this morning was considered by the bar association in making that recommendation. I suggest the charges that those outside the Senate have made are trumped up charges that bear no resemblance to the truth.

In characterizing her as somehow outside the mainstream, these groups

have done a great disservice, not just to the President and to the court system and the rule of law, but to this fine individual, personally. That is, perhaps, the biggest tragedy of all.

The Washington Post, which is not known to be, by conservatives anyway, a friendly newspaper to the President or to conservatives or to the conservative philosophy, in an editorial on July 24, made clear its view that it would be inappropriate to reject Justice Owen; that she was highly qualified and that her conservative views, if indeed she had them, would not be a reason for her to be disqualified and rejected. The Post characterized her as a conservative in the editorial, concluding:

> In Justice Owen's case, the long wait has produced no great surprise. She's still a conservative. And that is still not a good reason to vote her down.

I remember in the last few weeks of the campaign for the Presidency, Al Gore said one thing I agreed with. He said: You should not vote for President Bush because if he's elected President then he'll nominate conservatives to the court.

It is no great surprise that a President would nominate people to the courts who think like the President does. That is traditional in this country and Al Gore was right.

If you elected him, you are more likely to get people who are more liberal. If you elected President Bush you are more likely to get people who are more conservative. That is our system and that has never been a basis for the Senate to substitute its political judgment for that of the President—who after all, again, was elected by all of the people in the country—and vote the nominee down based on ideology.

Instead, it has always been the tradition to determine whether the candidate was well qualified, had the right ethics and judicial temperament, and was otherwise qualified. If so, then the candidate was confirmed.

As a member of the committee and as a Member of this body, I have voted on a lot of nominees with whom I did not agree politically. There are members of the Ninth Circuit Court of Appeals sitting now who have voted wrong in every controversial case, as far as I am concerned. But I voted for them. I voted to confirm them because I believed that President Clinton, having been elected by all of the people of the country, deserved his nominees. I couldn't argue with the qualifications or ethics of the people for whom I voted. These, too, were rated highly by the American Bar Association. They, too, were smart people who had good judicial ethics. So I voted for them, knowing that probably they would come down on the wrong side of decisions that mattered to me in certain situations. And that has been the case. But I do not regret voting for them because that has been the tradition for over 200 years in this country.

Senator after Senator on the floor of the Senate has made that point: I don't necessarily like this candidate's views, but I am going to support the candidate because of the tradition of the Senate to give the President's nominees the benefit of the doubt.

The new ideology in the Senate, according to the majority members of the committee, is that the burden of proof is now on the nominee; that unless the nominee can demonstrate to the members of the committee the nominee's willingness to abide by this test that has been established, that the committee has the right to turn these nominees down. The burden of proof has heretofore been on the committee members to find a reason to reject the nominee if, in fact, there was one.

To be candid, Members of the Senate have sometimes gone looking for reasons to oppose a nominee when they believed that the ideology was too far one way or the other. Sometimes they found those reasons and sometimes they did not. But up to now, anyway, unless you could find a darned good reason to oppose a nominee, you didn't do so.

Now that has changed. That is why I said this is a very dark day in the Senate. If this persists, we are going to get to the point where we have judges sitting who were confirmed based upon political ideology so the citizens of the country are no longer going to be able to go into court and be satisfied regarding the one person who will rule on their fate, on their property, and in some cases even their lives—that the individual litigant can no longer count on the decisions made to be fair and in accordance with the law and the Constitution of the United States.

I know of very few countries in the world where a citizen is willing to volunteer and go into court and say: I believe I am absolutely right, but I am willing to let a judge, somebody I have never met before, who I do not know, make a decision that could dramatically affect my life because I believe in the rule of law as applied in the United States of America, in fairness and in the application of the rule of law in the U.S. Constitution. There are not very many places in the world where you feel good about going into a court and literally placing your life in the hands of someone you don't know.

But we trust those people in the United States because of the tradition that has enabled us to appoint people to the bench who, by and large, rule on the basis of their view of the law and of the Constitution rather than on a political ideology. But if this persists, you are not going to know when you go before the judge whether this was a judge who was chosen because of ideology and, if so, how that might be applied in your particular case. That is a very bad thing. It begins to undermine the rule of law in this country. That is why people, such as Lloyd Cutler and others, were very wary of a change in the practice of confirming judges this way.

I think it is interesting that liberals in this country were always very concerned about President Reagan and the first President Bush applying a litmus test to nominees. They both made it clear that they applied no such litmus test. The litmus test that was of most concern related to the issue of abortion. It is clear, from at least some of the nominees President Bush appointed, that he did not have a litmus test in mind because those judges have not agreed with the Reagan-Bush kind of political philosophy. But I think it is appropriate that there be no litmus test on abortion or any other issue.

When I recommended a judicial nominee to the President—either to President Clinton or to President Bush—I did so on the basis that I could easily say I never asked this candidate about his or her position on an issue such as abortion. In fact, to this day I don't know those candidates' positions, by and large, on that particular issue. But it appears to me now the litmus test is being applied, and specifically on the issue of abortion, if you listened to the members of the committee who discussed Justice Owen's nomination today.

It is interesting that the Judiciary Committee, in response to the concern about a President applying a litmus test, has a question that has always been put to the nominees before it. We have a list of questions. But one of the key questions is: Has anybody at the White House or in the Government asked you about your position on any issues that might come before the court? If so, specify who, when, and so on. Because the members of the Judiciary Committee wanted to know if anybody in the executive branch queried them about their political views on issues that might come before the court. And, of course, if anybody had done so, the committee would have risen as one and said: That is improper; you are applying a litmus test, and you can't do that.

Some of the witnesses who came before the committee when we had the hearings on this alluded to that questionnaire. And we said: You can't substitute the traditional advice for confirmation with a political litmus kind of test and only apply it in the legislative branch.

If the members of the Judiciary Committee are going to begin applying a litmus test—if we are going to begin making our decision on ideology—then you can expect the President of the United States is going to do the same thing, continuing down that road.

I think there is an element of hypocrisy because that question still exists. It is still asked by the members of the Judiciary Committee. But we say the President dare not ask it.

I think we have to get our thinking straight. Are we going to allow decisions such as the one that was made today by the majority of the Judiciary Committee to become the prevailing view in the Senate and the traditional practice and test of the Judiciary Committee of the Senate or are we going to

take a big, deep breath and say: Wait a minute—whether it is a Republican or Democratic President and whether it is a Republican or Democratic Senate—this is taking us down a very wrong and dangerous path.

I believe that in the great tradition of partisan Members of this body, who nevertheless understood that politics was no way to make decisions on judges, good sense will ultimately prevail and the Senate will return to a standard that is appropriate—whether the candidate is well qualified based upon traditional temperament and ethics, and on their ability to apply the law fairly, and understanding and knowledge of the law.

If we don't return to that kind of a standard, then we are on an inevitable decline in the way that our country applies the rule of law; and, since the rule of law underpins everything in the United States—from our guaranteed constitutional rights to our economic free market system, our property rights, and all the rest—it would be the beginning of the end of this country.

I do not exaggerate when I say that nothing less is at stake and that this body needs to address this question very seriously before decisions such as today's become the rule rather than the aberrant exception.

I believe this is a dark day in the history of the Senate, that history will judge the actions of the committee today very harshly. I just hope my colleagues will consider whether in the future we need to return to the tradition that has served Presidents and the Senate and the Nation so well. I hope so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I heard the last part of the remarks of the Senator from Arizona about what happened today in the Judiciary Committee to Supreme Court Justice Priscilla Owen, a member of the Texas Supreme Court, who was voted down on a straight party line vote. I have never seen a case in which a person who is totally qualified, a person who has shown integrity on the bench, and who has the academic credentials to be a great Federal judge would be turned down for, really, I think a litmus test on issues.

In the past administration—the Clinton administration—I voted for a number of judges with whom I disagreed philosophically, judges who I knew would rule differently from what I thought would be the ''right vote'' on the court. But I tried to see what their qualifications were. I certainly tried to see if they would be strict constructionists to the Constitution, if they would adhere to the law rather than be traditional judicial activists. I voted for people with whom I disagreed many times. Today, I don't think that could be said for members of the Judiciary Committee.

I am told there has never been a nominee who had the unanimous qualified recommendation from the American Bar Association and the support of both home State Senators who has been turned down for a traditional nomination.

I am sad today because I know Priscilla Owen. I know what a fine person she is. Not only did she graduate right at the top of her class in law school, but she had the No. 1 grade on the Texas bar exam when she took it. She has sterling credentials academically. She is very well regarded by the former Democratic attorney general. The chief justice of the Supreme Court of Texas was very supportive of her and came out publicly for her. The other Democratic member of the Supreme Court of Texas with whom she served came out strongly for her.

It is just stunning that someone who never had one smirch on her record of integrity, who was totally well qualified and unanimously certified by the American Bar Association, and who was reelected to the Texas Supreme Court by over 80 percent of the vote would be turned down by the Judiciary Committee. I think this is a sad day.

But I will say this: I talked to Justice Owen today. I said: You lost the battle today, but you could win the war because I am absolutely certain that President Bush will renominate her if there is Republican control of the Senate. If that happens, she will be confirmed, because she deserves to be confirmed.

It is very hard on a personal level to see someone as committed as Priscilla Owen—she is basically a nonpolitical individual. She did not even know when she was asked to submit her name for the Supreme Court of Texas if she had voted in the primary before. This judge is not political.

But George Bush—Governor of Texas at the time—appointed her. She then ran for election after her appointment and was endorsed by every newspaper in Texas and was just thought of by both Republicans and Democrats as the most qualified person who had been put forward for this particular seat on the bench on the Fifth Circuit.

It is a sad day, but I think this is not over.

I do believe that President Bush will reappoint her in the next Congress if the Republicans control the Senate and he believes that she will get a fair hearing. I believe she will win the vote of the Senate, and she will show what a great judge she can be because she will be sitting on the Fifth Circuit bench.

But this is a tough day for her. I think she did not deserve this treatment. I will say that in the parts of the hearing that she had that I saw, she was outstanding and did as good a job as anyone I have ever seen who was a nominee for the Federal bench. She did so well that she won the endorsement of the Washington Post, the Chicago Tribune, and the Wall Street Journal. She had accolades from newspapers across America.

She does not deserve to have the treatment that she got today. But we will have another day, and I believe Priscilla Owen will go down in the records as a great Federal judge, because I believe she will be one eventually.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, has the bill been reported this afternoon?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. REED). Morning business is closed.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

Wellstone Amendment No. 4486 (to amendment No. 4471), to prohibit the Secretary of Homeland Security from contracting with any corporate expatriate.

Reid amendment No. 4490 (to amendment No. 4486), in the nature of a substitute.

Smith (N.H.) amendment No. 4491 (to amendment No. 4471), to amend title 49, United States Code, to improve flight and cabin security on passenger aircraft.

Reid (for Boxer/Smith (N.H.)) amendment No. 4492 (to amendment No. 4491), to amend title 49, United States Code, to improve flight and cabin security on passenger aircraft.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, it is my understanding that Senator WELLSTONE has a modification that will allow us to proceed and finish his amendment. Recognizing that as the case, people still wish to speak in relation to that amendment. I think that can be done after we take that action. So if Senator WELLSTONE is ready, I will ask that he be allowed to modify his amendment, and that will be accepted by voice vote.

Following that, the Senator from Texas will be recognized for 20 minutes to speak in relation to the legislation before the Senate; and the manager of the bill, Senator THOMPSON, wishes to speak, and I ask that he be recognized following the statement of the Senator from Texas.